Supreme Court, U.S.
FILED

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NO. _____

In the

Supreme Court of the United States

AMIR A. TAHAMTAN,

Petitioner

VERSUS

STATE OF GEORGIA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

HERBERT SHAFER
41 Forrest Place
Atlanta, Georgia 30328
(404) 255-3309

Counsel for Petitioner

QUESTIONS PRESENTED

I. The question presented is the extent to which a citizen may disobey a policeman's order to leave a particular location, when the command is not based on any specific law, but only on the officer's subjective belief that his command is prudent. For purposes of this Petition, we assume that the officer is engaged in the lawful discharge of his duties. We also assume that the defendant was not violating any particular law at the time he became the subject of the officer's command to leave.

II. Is O.C.G.A. §16-10-24(a) unconstitutional, as applied, to the facts in this case in that it affronts the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution?

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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Petitioner, AMIR A. TAHAMTAN, respectfully prays that a Writ of Certiorari issue to review the decision of the Court of Appeals of Georgia entered on November 1, 2005.

OPINIONS BELOW

The Supreme Court of Georgia denied Petitioner's Application for Writ of Certiorari on February 27, 2006, with Justices Hunstein, P.J., and Behnam, J., dissenting. The opinion of the Georgia Court of Appeals affirming Tahamtan's conviction, Appendix A, attached hereto, is unpublished

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S. C. §1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitutional provides:

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

United States Constitutional, Amendment Fourteen, in pertinent part, provides:

". . . nor shall any State deprive any person of liberty . . . without due process of law . . . ."

Section 16-10-24 of the O.C.G.A., in pertinent part, provides:

"(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful discharge of his official duties is guilty of a misdemeanor.

(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation supervisor, parole supervisor, or conservation ranger in the lawful discharge of his official duties by offering or doing violence to the person of such officer or legally

authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years."

PROCEDURAL HISTORY

On June 22, 2004, Amir A. Tahamtan was charged by way of accusation in the State Court of DeKalb County for two counts of obstructing a law enforcement officer in violation of O.C.G.A. §16-10-24(a).

A jury trial was had on September 20, 2004 and the jury returned a verdict of guilty on both counts. An appeal therefrom was lodged in the Court of Appeals, and it affirmed. A Petition for a Writ Certiorari to the Supreme Court of Georgia was filed on November 21, 2005 and the Petition was denied on February 27, 2006, with two justices dissenting therefrom.

THE FACTS

In this brief, half-day trial, the facts were not hotly disputed. The defendant was driving on the Interstate and saw an officer pull over another vehicle. The defendant pulled in behind the officer. The officer went back to the defendant's vehicle and asked what he was doing there. The defendant responded (in a non-angry way, Tr. 20) that he wanted to witness the issuance of the citation to the other car because he did not think it was appropriate. The officer apparently did not think that the defendant's presence as a witness was appropriate and directed the defendant to leave. The defendant refused and became somewhat more hostile. The officer then arrested the defendant for obstruction. At trial, the officer testified that he was concerned for his safety (Tr. 23). Nevertheless, he also testified that the defendant was not interfering with traffic and

was not guilty of any violation of the law (Tr. 36-37).[1] The defendant did not interfere with the issuance of the citation to the other driver (Tr. 37) other than "by his mere presence." (Tr. 36.)

REASONS FOR GRANTING THE WRIT

The relationship between law enforcement officers and citizens is central to most constitutional criminal law jurisprudence. Whether it is the legality under the Fourth Amendment of law enforcement agents' efforts to search a location, or seize people or things, or the Fifth Amendment right of suspects to be free from improper interrogation by the police, the boundaries that limit the scope of law enforcement activities require constant attention.

This case involves another type of boundary. Specifically, the question presented is the extent to which a citizen may disobey a policeman's order to leave a particular location, when the command is not based on any specific law, but only on the officer's subjective belief that his command is prudent. For purposes of this Petition, we assume that the officer is engaged in the lawful discharge of his duties. We also assume that the defendant was not violating any particular law at the time he became the subject of the officer's command to leave.

The United States Supreme Court addressed an analogous situation two years ago in *Hibel v. Sixth Judicial District Court of Nevada, Humboldt County*, 542 U.S. 177

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1. The officer mentioned that a person is not permitted to "park" on the side of a public highway, but did not claim that Mr. Tahamtan was guilty of violation of this law.

(2004). In that 5-4 decision, the majority concluded that a state "stop and identify" statute was constitutional, where the police have a valid, articulable suspicion supporting the decision to detain the person. The refusal to comply with the officer's demand that the person produce identification could support a criminal conviction.

In this case, in one count the defendant was convicted of obstruction of an officer, based on his refusal to comply with an officer's order that he leave a certain location even though there was nothing unlawful about the defendant's presence at that location. In another count, the defendant was convicted of obstruction of an officer by obstructing the officer in the discharge of the officer's duties. Taking the evidence in the light most favorable to the verdict, Petitioner assumes, as the officer testified, that he subjectively feared for his safety. Nevertheless, there was virtually no objective information supporting the officer's "fear" (hence no basis for the "disobeying a command" conviction) and no objective evidence that the defendant did, in fact, obstruct the officer in the discharge of his duties.

Petitioner urges the Court to grant a writ of certiorari and to decide these questions: (1) May a person be found guilty of obstructing an officer based on a refusal to obey the command of the officer, if the person is not breaking any law? (2) May a person be found guilty of obstructing an officer simply by remaining in a place that the officer later testifies obstructed his activities?

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ HERBERT SHAFER
Herbert Shafer

Attorney for Petitioner

APPENDIX

SECOND DIVISION
RUFFIN, C.J.,
JOHNSON, P.J., BARNES, J.

November 1, 2005

NOT TO BE OFFICIALLY
REPORTED

IN THE COURT OF APPEALS OF GEORGIA

A05A1328. TAHAMTAN v. THE STATE

BARNES, Judge

Amir Ahmad Tahamtan appeals his conviction for two counts of obstructing a law enforcement officer in violation of OCGA §16-10-24(a), asserting that the evidence against him was insufficient. For the reasons that follow, we affirm.

We view the evidence on appeal in the light most favorable to the verdict, and no longer presume the defendant is innocent. We do not weigh the evidence or decide the witnesses' credibility, but only determine if the evidence is sufficient to sustain the convictions. *Taylor v. State*, 226 Ga. App. 254, 255 (485 SE2d 830) (1997). We construe the evidence and all reasonable inferences from the evidence most strongly in favor of the jury's verdict. *Sims v. State*, 226 Ga. App. 116 (1) (486 SE2d 365) (1997).

Viewed in that light, the evidence at trial established that, while conducting stationary laser speed detection on an interstate highway, a City of Doraville police officer detected a car traveling 86 miles per hour in a 55 mile per hour zone within the city limits. He activated his blue lights and pursued

the car, stopping it outside the city limits. As he approached the stopped car, a truck driven by Tahamtan pulled close behind his cruiser. The officer continued toward the stopped car and obtained the driver's license and insurance information. The officer then approached Tahamtan's truck and asked him if he was traveling with the other car. Tahamtan replied that he was not. When Tahamtan asked whether the driver of the other car was going to get a ticket, the officer answered in the affirmative and asked Tahamtan again whether he was traveling with the other car. Tahamtan answered by saying no, he wanted to be a witness. When the officer asked what he planned to witness, Tahamtan asserted that the officer was engaging in illegal conduct because his patrol car said Doraville Police and he was out of his jurisdiction.

The officer testified that at this point, he felt Tahamtan was "being a little confrontational." He also testified that he became concerned for his safety because the car in front of him contained three men, and if he were in his police car writing a ticket, his view through the back of the cruiser was obstructed by his canine and its cage. The officer testified that he could not conduct his initial traffic stop with Tahamtan sitting behind him, and further noted that parking in the breakdown lane of a public highway is not permitted.

When the officer asked Tahamtan to leave, Tahamtan replied, "I'm not going anywhere." The officer informed him that if he did not leave, he would be arrested for obstruction. Tahamtan responded, "Don't threaten me." The officer then arrested Tahamtan for obstruction, placed him in handcuffs, and instructed him to sit on the guard rail. Tahamtan replied that he would rather stand, and then approached the passenger side of the stopped car to speak to the driver while the officer was looking down the interstate to see if his back-up was coming. The officer yelled at him to return to the rear of the

patrol car and not to move. The back-up officer arrived a few minutes later and transported Tahamtan to jail.

The State indicted tahamtan for obstruction fo a law enforcement officer by interfering with the officer's lawful duties and refusing the officer's commands. The jury found Tahamtan guilty on both counts and he was sentenced to serve 12 months, one day in jail and the remainder on probation.

Tahamtan asserts that insufficient evidence supports his conviction, which is therefore unconstitutional under the Due Process Clause of the Fourteenth Amendment. He claims that no obstruction existed, noting that the Oxford Dictionary defines "obstruct" as to stand in the way of, or persistently oppose the progress or course of, and to hinder, impede, retard, delay, withstand, or stop.

OCGA §16-10-24(a) provides that "a person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful exchange of his official duties is guilty of a misdemeanor." "The statute was made purposefully broad to cover action which might not be otherwise unlawful, but which obstructed or hindered law enforcement officers in carrying out their duties." *Hudson v. State*, 135 Ga. App. 739, 742 (2) (218 SE2d 905) (1975). Evidence of refusing to obey the lawful commands of an officer who is seeking to protect his safety, however, will sustain a conviction for obstructing an officer under OCGA. *Arsenault v. State*, 257 Ga. App. 456, 457 (1)(a) (571 SE2d 456) (2002).

This Court determines only whether sufficient evidence existed for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (99 SC 2781, 61 LE2d 560) (1979). The evidence showed that Tahamtan failed to obey the officer's command to leave the

area, and again failed to obey the command to remain in place after he was cuffed, instead walking up to another car containing three unfamiliar men. He thus prevented the officer from completing his traffic stop and cause him to fear for his safety.

Tahamtan also contends that his conduct did not constitute a crime and that no probable cause existed for his arrest, attacking the constitutionality of OCGA §16-10-24(a) as applied here. To the contrary, Tahamtan's refusal to obey the lawful commands of the officer, who was seeking to protect his safety, sustains his conviction for obstruction. *Arsenault v. State*, supra, 257 Ga. App. At 457

We conclude that the evidence was sufficient for a rational trier of fact to find Tahamtan guilty beyond a reasonable doubt of obstruction of an officer. *Jackson v. Virginia*, supra 443 U.S. 307.

Judgment affirmed. Johnson, P.J. concurs, Ruffin, C.J., concurs in judgment only.

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: February 27, 2006

Herbert Shafer
41 Forrest Place
Atlanta, Georgia 30328

Case No. S06C0502

AMIR AHMAD TAHAMTAN v. THE STATE

COURT OF APPEALS CASE NO. A05A1328

The Supreme Court today denied the petition for certiorari in this case

All the Justices concur, except Hunstein, P.J., and Benham, J., who dissent.

Sherie M. Welch, Clerk